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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/657,041

09/05/2000

Leonard Pinchuk

BSI-430US8

9622

23122 7590 12/08/2008
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EXAMINER

SEVERSON, RYAN J

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

12/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/657,041	Applicant(s) PINCHUK ET AL.	
	Examiner Ryan Severson	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 40-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 40-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/21/2008, 7/3/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 30 July 2008 has been entered.

Reissue Applications

2. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following: The supplemental declaration filed 06 October 2003 failed to properly identify any error in the claims by reference to the specific claim(s) and the specific claim language wherein lies the error and how it renders the original patent wholly or partially inoperative or invalid. (MPEP 1414)

3. **Claims 1-30 and 40-42 are rejected as being based upon a defective reissue supplemental declaration under 35 U.S.C. 251 as set forth above.** See 37 CFR 1.175. The nature of the defect(s) in the supplemental declaration is set forth in the discussion above in this Office action.

4. Since the litigation related to this reissue application is terminated and final, action in this reissue application will NOT be stayed. Due to the related litigation status of this reissue application, EXTENSIONS OF TIME UNDER THE PROVISIONS OF 37 CFR 1.136(a) WILL NOT BE PERMITTED.

Priority

5. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

6. The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original non-provisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

7. The disclosure of the prior-filed application, Application No. 08/140,245, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. Regarding claims 1, 23 and 25, the prior filed application provides no support for the structure of the trunk component and trunk liner, particularly the liner having cylindrical upper and lower body portions with two leg portions disposed there between. Further, regarding claim 40, the prior filed application provides no support for the liner having a cylindrical body portion and two leg portions, wherein portions of the two leg portions abut the trunk component and portions of the two leg portions that do not abut the trunk component abut one another and are secured to one another.

8. Therefore, the claims are granted a priority date of 13 November 1995.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. **Claims 40-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Martin (5,575,817).** Martin discloses a multi-component supportive graft comprising a trunk component (7) surrounding a trunk liner (3), the trunk liner having a generally cylindrical body portion (6) and two leg portions (4 and 5). The cylindrical body portion and leg portions abut the trunk component (i.e. the outer surfaces of the leg portions abut the trunk component because they are part of the same continuous surface as the cylindrical body portion). The radially inward surfaces of the leg portions abut one another (where the inner surfaces of each leg component meet at the point of bifurcation) but not the trunk portion. A cylindrical supportive leg component (2) is slidably positioned within the leg portion (5) of the trunk liner.

Response to Arguments

11. Applicant's arguments filed 30 July 2008 have been fully considered but they are not persuasive. Applicant argues the supportive leg component and leg portion of the trunk liner are not slidable with respect to one another. However, they must be slidable to allow for proper positioning (i.e. to place the supportive leg component).

Allowable Subject Matter

12. Claims 1-30 would be allowable if the rejection of those claims is overcome by filing of a supplemental reissue declaration properly identifying at least one error in the claims by reference to the specific claim(s) and the specific claim language wherein lies the error and how it renders the original patent wholly or partially inoperative or invalid.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Severson whose telephone number is (571)272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/R. S./
Examiner, Art Unit 3731

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731